IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 920 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAVIR BULLION

Versus

BIMAL B SHAH THRO' P.O.A.

Appearance:

1. Civil Revision Application No. 920 of 2001

MR DP KINARIWALA for Petitioner No. 1-3

MR PC KAVINA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2002

ORAL JUDGEMENT

#. The petitioners are the original defendants against whom the respondent has filed suit, being Summary Suit

No.28 of 2000. The said suit is pending in the court of the Civil Judge (Senior Division), Bhavnagar. In the aforesaid suit, on behalf of the petitioners, applications were given at Exh.31 as well as Exh.32 to the effect that the suit of the plaintiff is not maintainable in view of the provisions of Section 47 of the Foreign Exchange Regulation Act, and, therefore, suit may be dismissed under the provisions of Order 7, Rule 11 (d) and (a) of the Civil Procedure Code. By the aforesaid applications, it was prayed that, suit be accordingly dismissed.

#. The trial Court, while rejecting the aforesaid two applications, came to the conclusion that, transaction in question is taken place through the Bank and with the permission of the Reserve Bank. It is, therefore, held that, it cannot be said that suit is not maintainable. Accordingly, the said two applications were rejected by the trial Court. The said order is impugned in this revision application.

#. Considering the facts and circumstances of the case, in my view, this revision application is not required to be entertained, as, it is filed against the interlocutory order. It cannot be said that the trial Court has decided any controversy, which may affect the rights of the parties, in any manner. It cannot be said that the trial Court has committed any jurisdictional error while passing the impugned order. In that view of the matter, I do not find any substance in this revision application. Hence, this revision application is rejected. Rule is discharged with no order as to costs.

#. However, it is argued by the learned advocate for the petitioners that, the trial Court be directed to frame necessary issue as to whether the suit is maintainable. It is not necessary to give such directions, because, the Court is bound to frame necessary issue arising out of the pleadings. If any particular issue arises out of the pleadings, naturally, the party can request the Court to frame such issue if the same is not framed. It is, therefore, not necessary to consider the said request made on behalf of the petitioners as necessary issues are always required to be framed from the pleadings of the parties.

This revision application stands rejected accordingly.

(P.B.Majmudar,J)
(pathan)